

Exhibit 4

Charu Desai v. University of Massachusetts Memorial Medical Center, Inc. et al.

Civil Action No. 4:19-cv-10520-DHH

University of Massachusetts Chan Medical School's Motion for Summary Judgment

Excerpts of Dr. Desai's Deposition

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

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UNITED STATES DISTRICT
DISTRICT OF MASSACHUSETTS
CIVIL ACTION NO. 4:19-cv-10520-DHH
* * * * *
CHARU DESAI,
PLAINTIFF
v.
UMASS MEMORIAL MEDICAL CENTER, INC., et al.,
DEFENDANTS
* * * * *

DEPOSITION OF CHARU DESAI, M.D.,
Conducted Remotely
211 Congress Street, Suite 720
Boston, Massachusetts 02110
Friday, September 18, 2020
10:37 a.m. to 5:00 p.m.

Pages 1-202

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

22

1 A No. Not that.

2 Q Can you tell me your educational background
3 beginning with your undergraduate degree, please?

4 A Undergraduate I did in India, college, and then I
5 also did medical school in India, and I did --
6 then because I was already married, I joined my
7 husband in the U.S.

8 Q When did you graduate medical school?

9 A 1973, approximately.

10 Q Did you have a specific concentration or field of
11 specialization upon graduation?

12 A No.

13 Q What is your medical area or areas of
14 specialization?

15 A Right now, I was a diagnostic radiologist, and I
16 had a CT ultrasound fellowship.

17 Q A CT ultrasound fellowship?

18 A Yes.

19 Q And in layman's terms, what is that?

20 A It's a specialty in radiology where you do CT on
21 all parts of the body and other stuff.

22 Q When did you complete that fellowship?

23 A Approximately, 1982, I think.

24 Q Are you board certified?

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

23

1 A I am.

2 Q And is that in diagnostic radiology?

3 A Yes.

4 Q Is there any requirement to recertify for the
5 boards or is that perpetual?

6 A Not for me at present because I did my training
7 long before. Recent graduates in certain years,
8 they have to do recertification.

9 Q Okay, but you were grandfathered in so you don't
10 have to recertify?

11 A Yes.

12 Q Okay. Other than the CT ultrasound fellowship,
13 did you complete any other fellowships?

14 A I did not.

15 Q Have you ever been qualified as an expert in a
16 court of law?

17 A Not that I recall.

18 Q How does your training in diagnostic radiology and
19 CT ultrasound fellowship, how would that differ
20 from an interventional radiologist training, if
21 you know?

22 A It's just a different radiology, that everybody
23 has to do basic fundamental radiology training,
24 and then they choose whatever area they like. So

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

24

1 it's not different. It's just people's -- what
2 they like.

3 Q To become an interventional radiologist takes
4 another one or two years of training in education,
5 correct?

6 A Same thing for the CT and all the other specialty
7 too.

8 Q And you opted not to go interventional radiology.
9 You opted to go CT ultrasound in terms of
10 fellowship, fair?

11 A Yes.

12 Q So you would not say you're qualified in any
13 manner as an interventional radiologist, correct?

14 MS. WASHIENKO: Objection.

15 You can answer, Dr. Desai.

16 Q Do you understand the question, ma'am?

17 A Yes, go ahead. Rephrase, please.

18 Q Sure. Fair to say, you are not qualified as an
19 interventional radiologist?

20 MS. WASHIENKO: Objection. You can answer,
21 Dr. Desai.

22 A Yeah, I am not, but --

23 Q Okay. You've never performed --

24 A -- but I just want to answer something.

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

25

1 Q Sure.

2 A When I did my training as a diagnostic
3 radiologist, which everybody is required to go
4 through all the areas of training, that includes
5 intervention also.

6 Q And that would be in the early 1980s, correct?

7 A Yeah, but for everybody who does the radiology
8 residency, they have to do procedure in
9 everything, which I did.

10 Q So it's been 35 plus years since you've done any
11 type of interventional radiology work, correct?

12 MS. WASHIENKO: Objection.

13 A To my recollection, but even maybe 15 years ago or
14 so, I used to do chest biopsy. So that is
15 interventional too.

16 Q So 15 years ago, you did chest biopsies?

17 A To my recollection, yeah.

18 Q But beyond that, you never held yourself out to
19 any employer as having the expertise to do
20 interventional radiology on a full-time basis,
21 correct?

22 A Yes.

23 Q And since you left UMass. Memorial, you have not
24 applied for any interventional radiologist

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

29

1 Q How long --

2 A Also, I was on a clinical track. I was not on the
3 regular track.

4 Q Okay.

5 A So that -- see, when you are on a regular track,
6 you are supposed to require certain number of
7 papers and all that.

8 Q So because you were on a clinical track, you
9 elected not to pursue any scholarly publications,
10 is that right?

11 MS. WASHIENKO: Objection. That wasn't her
12 testimony.

13 MR. KILROY: Pat, you need stop coaching
14 her. I'm asking her a question. It's a follow-up
15 to her testimony. I'd like her to answer.

16 MS. WASHIENKO: Fair enough, Bob, and fair
17 enough, but you just asked her if, because she was
18 on a clinical track she elected not to do any
19 scholarly research, and she had just testified
20 that to the best of her memory she had done some
21 scholarly research and co-authored a paper in the
22 past 15 years. She just couldn't recall the
23 specifics. So I just want to get the question
24 reflecting her earlier testimony.

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

30

1 MR. KILROY: Okay.

2 Q Putting aside the scholarly publications that you
3 believe you completed or co-authored, is it fair
4 to say that because you are on a clinical track,
5 you did not prioritize scholarly work?

6 MS. WASHIENKO: Objection. You can answer,
7 Dr. Desai.

8 A Yes.

9 Q Okay. Now, if I'm correct, I believe your resume,
10 your CV will show you attended a CT Bootcamp:
11 Principles, Pearls and Protocols in Las Vegas in
12 2015. Do you recall that?

13 A Yes, vaguely. See, you talking about long time,
14 so.

15 Q So it's been a long time since you attended a CT
16 Bootcamp?

17 A Yeah, whatever date you are seeing, yes.

18 Q Okay. And did you actually attend each session
19 during that bootcamp?

20 A So that's what I was there for. As far as I
21 recall, yes.

22 Q Okay. That's what I'm asking. Did you actually
23 go and attend, or did you go on vacation and
24 attend sporadically?

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

74

1 produced for 2019, 2018, and 2017.

2 Am I correct that since 2017, you have not
3 been employed by any entity other than UMass.
4 Memorial?

5 A Please repeat the question?

6 Q Sure. Am I correct that since 2017, you've had no
7 employment with any entity other than UMass.
8 Memorial Medical Group and your dual employment
9 with the medical school?

10 A Yes.

11 Q Do you know who Dr. Rosen is?

12 A Yes.

13 Q He was your chair of radiology during the last few
14 years of your employment with UMass. Memorial,
15 correct?

16 A Yes.

17 Q And as the chair of the radiology department, he
18 was -- he had overall responsibility for radiology
19 at UMass. Memorial Medical Group, correct?

20 A Yes.

21 Q Would you agree that Dr. Rosen, as chair of
22 radiology, had an obligation to ensure patient
23 safety?

24 A Yes.

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

75

1 Q Would you agree that Dr. Rosen, as chair of
2 radiology, had an obligation to ensure quality of
3 radiological reads by the radiologists who report
4 up to him?

5 A Yes.

6 Q And that would include you, correct, when you
7 worked there?

8 A Yes.

9 Q Do you believe that Dr. Rosen, based on his
10 training and experience, is capable of assessing
11 the competence of a radiologist?

12 MS. WASHIENKO: Objection.

13 A Please repeat the question?

14 Q I'm sorry, I didn't catch your answer, ma'am.

15 A Please repeat the question.

16 Q Oh, sorry. Sure. Do you believe that Dr. Rosen,
17 based upon his training and experience, and his
18 role as chair, is capable of assessing a
19 radiologist's competence?

20 MS. WASHIENKO: Objection. You can answer,
21 Dr. Desai.

22 A Maybe.

23 Q And why do you hesitate and say "maybe" as opposed
24 to yes or no?

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

76

1 A Depends on what the circumstance is and what the
2 thing is all about.

3 Q Okay. I'll change the question. Do you believe
4 that Dr. Rosen, based on his training and
5 experience, is capable of assessing quality within
6 the radiology department?

7 A To a certain extent.

8 Q Okay. Well, you testified that you agreed that he
9 had an obligation, as chair, to ensure patient
10 safety, and you testified he had obligation to
11 ensure quality of radiological reads by the
12 radiologists who report to him. And so, are you
13 saying that despite those obligations, he only to
14 a certain extent had the ability to assess
15 quality?

16 A I'm not saying that. It is his territory and I'm
17 not going to discuss that.

18 Q I'll ask my question again though because I need
19 to understand clearly what you're saying.

20 Are you saying that Dr. Rosen was incapable
21 of assessing the quality of radiologists under him
22 at UMass Memorial?

23 A I did not say that.

24 Q Okay. So you would agree then, he was capable of

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

77

1 assessing quality of the radiologists who worked
2 for him?

3 A Like I said, to a certain degree. Depend what
4 area it is in.

5 Q Depending on what, ma'am?

6 A What modality, what area it is in.

7 Q Okay. What modality is he incapable of assessing
8 quality?

9 A I don't know.

10 Q Well, it's yours words, ma'am. You said, to an
11 extent depending on the modality. Is there a
12 modality that you're claiming Dr. Rosen is
13 incapable of assessing quality?

14 A It's not capable/incapable, okay. Yeah, he's
15 capable of quality everybody.

16 Q Okay. And would you agree that Dr. Rosen, as
17 chair of the department of radiology, as part of
18 his job duties, should take action if he believes
19 a radiologist's quality is substandard?

20 A I do not agree.

21 Q You don't believe that he should take action if he
22 believes a radiologist's quality is substandard?

23 A I do not agree, and the reason I do not agree,
24 that he has to bring the person, whoever, X, Y, Z,

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

78

1 to discuss.

2 Q That could be action, ma'am. That would be an
3 action for that discussion. So I'm asking, do you
4 agree that Dr. Rosen -- I'm not asking you
5 specific action, I'm asking just in general -- do
6 you agree Dr. Rosen, as the chair of the
7 department, and as part of his job duties, should
8 take action if he believes a radiologist's quality
9 is substandard?

10 A He can.

11 Q I didn't ask if he can. I know he can. I'm
12 asking if you believe he should, or should he
13 ignore it?

14 A He should.

15 Q Okay. Do you know why Dr. Rosen made the
16 determination to terminate your employment and
17 give you the one-year notice of termination?

18 A When he gave me the letter, he told me it was a
19 no-cause termination.

20 Q I'm asking, do you know why he made that decision
21 to give you a no-cause termination?

22 MS. WASHIENKO: Objection. You can answer,
23 Dr. Desai.

24 A So in the beginning he told me no-cause

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

79

1 termination, and then further, because I was
2 really upset and I ask him why, then he is telling
3 me it is poor quality of work.

4 Q Okay. So you've testified that Dr. Rosen had an
5 obligation to maintain patient safety, an
6 obligation to maintain quality, an obligation as
7 part of his job duties, to take action if he
8 believes a radiologist's quality is substandard,
9 and then, he actually took action in the form of
10 no-cause termination to you based on his
11 assessment that your quality was substandard. Is
12 that fair?

13 A I believe that's what he did.

14 Q Okay. And are you aware that Dr. Rosen, when
15 making that determination to terminate your
16 employment, based on a quality concern, relied on
17 an independent expert valuation of 25 randomly
18 selected cases of yours?

19 MS. WASHIENKO: Objection. You can answer,
20 Dr. Desai.

21 A I'm aware.

22 Q Okay. So are you claiming that by Dr. Rosen
23 asking an independent expert to review 25 randomly
24 selected cases of yours, that he did so based on a

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

85

1 MS. WASHIENKO: Objection.

2 A I don't think review has anything to do with the
3 age. Both don't go together.

4 Q I agree. I'm just trying to make sure you agree.
5 So you're not claiming that he made the decision
6 to have it reviewed because of your age?

7 A Has nothing to do with age.

8 Q Okay. Do you believe that Dr. Rosen made the
9 decision to have 25 of yours cases reviewed for
10 quality purposes by an independent expert based on
11 the fact that you're a female?

12 A No.

13 Q Do you believe that Dr. Rosen made a decision to
14 have 25 of your cases reviewed by an independent
15 expert for quality purposes because of your
16 national origin?

17 A No.

18 Q Do you believe that Dr. Rosen made a decision to
19 have 25 of your radiological reads reviewed by an
20 independent expert for quality purposes because of
21 your race?

22 A No.

23 Q So upon what basis do you claim that Dr. Rosen's
24 decision was discriminatory?

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

86

1 MS. WASHIENKO: Objection.

2 On the basis of age, Bob?

3 MR. KILROY: No. Any basis. I went through
4 the categories that are named in her Complaint. I
5 want to know if there's something I'm missing.

6 A I think we are mixing up two things. The
7 independent review is number one. The age, race,
8 national origin, disability, everything is a
9 separate thing. Has nothing to do with the
10 independent review.

11 Q Okay. So the independent -- just so I'm clear,
12 the independent review you said is not affected in
13 any way by Dr. Rosen acting in a discriminatory
14 manner?

15 MS. WASHIENKO: Objection. You can answer.

16 A To my belief, first of all --

17 MS. WASHIENKO: Are you okay, Dr. Desai?

18 THE WITNESS: Huh?

19 MS. WASHIENKO: Are you okay?

20 A I believe that without even discussing that
21 anything was wrong, why did he do the independent
22 review?

23 Q Do you think that he didn't discuss with you
24 before the independent review because of your age?

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

90

1 with you because you're female? Do you understand
2 the syntax there?

3 MS. WASHIENKO: Ooh, Bob, that's badgering.

4 MR. KILROY: I'm trying to make sure she
5 understands me, Pat.

6 A I understand --

7 Q Okay.

8 A I understand that this has no relation, that's
9 what I understand, and you still asking me the
10 same question.

11 Q No, I haven't -- you haven't answered yes or no to
12 the female question.

13 A Independent review has no relation to the age,
14 sex, whatever. Why you asking that question?

15 Q You don't have to worry about why. So, you --

16 A Yeah, I do, because I'm answering the question.

17 Q Am I correct then that you're saying that the
18 independent review has nothing to do with your
19 allegation of discrimination?

20 MS. WASHIENKO: Objection, but you can
21 answer, Dr. Desai.

22 A In a way, it is.

23 Q I'm sorry?

24 A In a way, it is discrimination.

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

91

1 Q You're claiming the independent review decision by
2 Dr. Rosen was discriminatory.

3 Now tell me why that's discriminatory to
4 decide to send out for an independent review?

5 A Because there are a lot of people in the
6 department. There are maybe qualities for
7 something. Did he do independent review for all
8 of them? I don't think so. I do not think so.

9 Q Do you think that he made up his concern about
10 quality for you because of your race?

11 A I do not think he made up.

12 Q Okay. So he didn't make it up and he has an
13 obligation to ensure quality. Would you agree
14 that one way to assess quality, so that it's not
15 running a risk of being discriminatory, is to ask
16 for an independent expert to take a look at the
17 records? Would you agree that that's one way to
18 assess quality?

19 A Yes.

20 Q And would you agree that by doing that, it shows
21 Dr. Rosen is trying to remove himself from being
22 the one assessing your quality directly so he
23 could have a third-party expert make the
24 assessment without knowing that it was you?

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

92

1 A Yes.

2 Q And would you agree that if you are trying to
3 assess someone's quality, whether yours or someone
4 else's, that that's a fair way for a supervisor to
5 go about trying to assess quality?

6 MS. WASHIENKO: Objection. You can answer,
7 Dr. Desai.

8 A Yes, but if it is done the right way.

9 Q Okay. I understand.

10 A But done the right way, and it cannot be people
11 you know. It has to be third party means third
12 party. This is not -- it is not done the right
13 way. If it is done the right way, yes, but in our
14 case, it was not done the right way.

15 Q Okay. What was not done right?

16 A Yeah, just like I told you, take my 25, take other
17 25 for other person, take third person 25, and
18 then compare with each one of them. You can't
19 compare two of them and 25 of me, or two of
20 someone else, X, Y, Z. It's completely done
21 wrong. I do not agree.

22 Q So you just -- you have a concern that there
23 weren't enough cases reviewed by the expert for
24 other individuals?

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

93

1 A Yes. It should be one to one.

2 Q And if they had, and the expert came out with the
3 same results as to you, which as you know were
4 five major misses and I think four minor out of
5 the 25, if the expert had the same analysis as to
6 you, could he rely on the expert's analysis as to
7 you? Forgetting about what she might find on the
8 others.

9 A I do not agree completely with the expert report.

10 Q I know but -- I understand that. This has
11 nothing --

12 A If is not by major and minor, then it is not. It
13 is not.

14 Q But he's relying on what an expert tells him.

15 A But then even if it is, you know, you talking
16 about somebody 50 year spent, and not only that, I
17 spent 27 years at UMass., and all of a sudden, you
18 are no good? That I don't agree whatsoever.

19 Q I didn't say that to you, ma'am. I didn't say
20 you're not good.

21 A Yeah, you are saying independent review called
22 five major and five minor, whatever the number is.
23 I do not agree. So then that is the end of
24 my reason.

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

94

1 Q So you want to substitute your judgment for the
2 independent expert's judgment?

3 MS. WASHIENKO: Objection.

4 Q Is that right, would you agree, if Dr. Rosen is
5 acting fairly by relying on an independent
6 expert's evaluation as opposed to his own
7 evaluation?

8 MS. WASHIENKO: Objection.

9 A So what is the -- please repeat that?

10 Q Sure. Would you agree Dr. Rosen acted fairly,
11 appropriately, by relying on an independent
12 expert's evaluation as opposed to him making the
13 evaluation himself?

14 A I agree.

15 Q Okay. And so, what he received from the
16 independent expert said you had some quality
17 problems. You agree with that, right?

18 A I do not.

19 Q You don't agree that that's what the report said?

20 A Report said, but I do not agree.

21 Q No, I understand you don't agree that the report
22 is right, but you agree that's what the report
23 told him, right?

24 A Yes.

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

95

1 Q Okay. Now, do you think he should ignore the
2 report of the independent expert who was hired to
3 do the evaluation?

4 MS. WASHIENKO: Objection. You can answer.

5 A I didn't say that.

6 Q I'm sorry?

7 A I did not say that.

8 Q So you agree that he should not ignore the report,
9 right?

10 MS. WASHIENKO: Objection.

11 Q You have to answer, ma'am.

12 A Yeah, he should not.

13 Q Okay. And you would agree, he did not ignore the
14 report, isn't that right?

15 A He did not, but there are other steps he could do
16 to see.

17 Q And in seeking an independent expert's evaluation,
18 do you think Dr. Rosen was acting maliciously
19 toward you?

20 A I did not hear. Please repeat.

21 Q In seeking an independent expert's evaluation, do
22 you think Dr. Rosen was acting maliciously toward
23 you?

24 A No comment.

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

96

1 Q What's that?

2 MS. WASHIENKO: You have to answer,
3 Dr. Desai.

4 A Please repeat the question?

5 Q Sure. Dr. Rosen sought an independent expert's
6 evaluation on quality, and part of that was an
7 evaluation of your quality. Do you think he was
8 acting maliciously in seeking an independent
9 expert's evaluation on quality?

10 MS. WASHIENKO: Objection. You can answer.

11 A I hope not.

12 Q Do you have any facts that would support that he
13 was acting maliciously toward you by seeking that
14 independent expert's evaluation?

15 A Please repeat the question?

16 Q Can you offer any facts that would indicate
17 that Dr. Rosen acted maliciously when he was
18 seeking an independent expert's evaluation?

19 A I do not have right now.

20 Q I'm sorry, ma'am, I didn't hear you?

21 A I do not have right now.

22 Q I'm getting ready to show you Exhibit 11, which is
23 your Employment Agreement with UMass. Memorial
24 Medical Group.

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

97

(Exhibit 11 marked for identification and
displayed.)

Q Do you see that?

A How many pages is this?

Q Goes from CD 51 to CD 63, a total of 13 pages.

A All right. So what are we talking? Which place
you want me to go?

Q At this point, I'm just asking if you agree you
were subject to an employment agreement with
UMass. Memorial Medical Group?

A Yes.

Q Okay. And you were dual employed with the
University of Massachusetts Medical School,
correct?

A Yes.

Q You did not have employment, an employment
agreement with the UMass. Memorial Medical Center,
correct?

A Please repeat the question?

Q Sure. So what I'm establishing is that the
agreement you had for employment was with the
medical group and the medical school. You did not
execute an agreement with the medical center,
correct?

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

98

1 A Why, is there a different -- medical center? I
2 thought both are same.

3 Q If you look at the first paragraph, it will tell
4 you, you were entering an agreement with the
5 medical group, and then later in the agreement, it
6 says dual employment with the medical school.

7 A On the same page?

8 Q No, it's much further in.

9 A Okay.

10 Q Hold on, I'll get it for you so you can see it.
11 It's on page 4, Dual Employment, paragraph
12 1.14.

13 A Which page, please?

14 Q Sure, it's the fourth page.

15 A Fourth page, okay. Let me see if I find it.

16 Q And it's subparagraph 1.14.

17 A Yeah, I was dual employed. I know that.

18 Q Right. And so, I have never seen an employment
19 agreement for you with UMass. Memorial Medical
20 Center. I have only seen an employment agreement
21 with the medical group and dual employment with
22 the medical school. Do you agree that you do not
23 have an employment agreement with the medical
24 center?

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

99

1 MS. WASHIENKO: Objection. You can answer.

2 A Yeah, I don't recall.

3 Q Okay.

4 A I don't recall.

5 Q And you do not have a separate employment
6 agreement with Marlborough Hospital, correct?

7 A As far as I know. To my knowledge, no.

8 Q Okay.

9 Now, in paragraph 7.2 of the employment
10 agreement --

11 A Page number, please?

12 Q Sure. Bear with me now. It is page seven.

13 A Okay. Let me scroll. Seven. I have seven.

14 Q And 7.2 is Notice, the Notice provision in the
15 event of termination of employment?

16 A I see that, yeah.

17 Q And fair to say, you were provided the appropriate
18 notice period required by your employment
19 agreement, prior to your termination of
20 employment, based on your years of service, right?

21 A Yes.

22 Q And you agreed in writing, based on your signature
23 to this agreement, that UMass. Memorial Medical
24 Group could, in fact, terminate your employment

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

100

1 without cause but subject to a notice period,
2 right?

3 A Yes.

4 Q You're not claiming that UMass. Memorial Medical
5 Group violated or breached this employment
6 agreement in any way, correct?

7 MS. WASHIENKO: Objection. You can answer,
8 Dr. Desai.

9 A To my knowledge, what I saw.

10 Q I'm sorry, I didn't understand your answer.

11 A To my knowledge, what I saw.

12 Q To your knowledge, what you saw, you agreed there
13 was no breach of the employment agreement?

14 A Yes.

15 Q Okay. And if we go back, in paragraph 1.5 --

16 A Page number, please?

17 Q Page two. Bottom of page two.

18 A Let me see. Okay. Where are we?

19 Q So as part of your employment agreement, you had
20 an obligation to comply with the bylaws, rules,
21 regulations, policies, and procedures of UMass.
22 Memorial and your medical staff, right?

23 A Yes.

24 Q And that would include handling of peer reviewed

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

101

1 privileged materials, right?

2 A Handling peer review for who?

3 Q Meaning you have to ensure that you handle peer
4 reviewed privileged materials correctly?

5 MS. WASHIENKO: Objection.

6 Q You have to maintain their confidentiality,
7 correct?

8 MS. WASHIENKO: Objection.

9 Q Do you agree with that statement?

10 A Yes.

11 Q I'm going to show you in a second here,
12 Exhibit 12.

13 (Exhibit 12 marked for identification and
14 displayed.)

15 Q Do you see that?

16 A Not yet.

17 Okay.

18 Q This is the Academic and Administrative Time
19 Policy for UMass. Memorial, Bates number CD 1
20 through CD 2 produced by you to us, and it shows
21 up on the top, "Updated June 8, 2017."

22 You're familiar with this policy, correct?

23 A Yeah, I see.

24 Q I may have missed your answer. You're familiar

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

102

1 with this policy, Dr. Desai?

2 A Yeah, I told you I see it.

3 Q Are you claiming that you were not paid for any
4 days that you worked?

5 MS. WASHIENKO: Objection. You can answer,
6 Dr. Desai.

7 A Please repeat the question.

8 Q Sure. My understanding is you're not making any
9 claim that UMass. Memorial didn't pay you for any
10 days you actually worked; am I right that you're
11 not making that claim?

12 A I'm not.

13 Q Okay. And fair to say, you did not suffer any
14 loss of pay based on not being granted academic
15 days, correct?

16 A Please repeat the question?

17 Q Am I correct, you never suffered a loss of pay
18 based on the decision not to grant you academic
19 days?

20 A I did not -- repeat the question so I can answer
21 you, please, because I did not --

22 Q You did not suffer any loss of pay based on the
23 decision not to grant you academic days?

24 A Indirectly, I did, because people that got

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

103

1 academic day, they didn't have to do the clinical
2 work.

3 Q Right, but those people got paid for working
4 academic days. You got paid for working clinical
5 days. So what days did you not get paid for when
6 you were working?

7 MS. WASHIENKO: Objection. You can answer,
8 Dr. Desai.

9 A It's not the same, as far as I'm concerned.

10 Q Right, it's not -- well, someone can say to me
11 that my being in a deposition is not the same as
12 me being in court or going out to a client meeting
13 at UMass. Memorial, but I get paid for each one of
14 those. If I'm out at court, I can't be in a
15 deposition. If you're doing clinical, you can't
16 be doing academic days, and vice versa, but you
17 are getting paid.

18 So I'm asking, in that you got paid for
19 every day you worked for UMass. Memorial, isn't it
20 fair to say that you didn't suffer a loss of pay
21 based on the decision not to grant you academic
22 days?

23 MS. WASHIENKO: Objection. Asked and
24 answered.

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

104

1 A I did more days of clinical work compared to the
2 people who did academic days, so it's not the
3 same.

4 Q I know it's not the same, but you got paid for the
5 work you did, right?

6 MS. WASHIENKO: Objection.

7 A Yes.

8 Q Okay. And just to make my point clear, non-leap
9 year, there is 365 days in a year. If someone
10 worked 365 days, they'd get paid for 365 days.

11 If someone works academic days as a portion
12 of that, they don't get paid 385 days, they get
13 paid the days they work, the full 365, right?

14 So that's what I'm trying to draw the
15 distinction. You're getting paid for the time you
16 work. It's just that your work happened to be
17 clinical as opposed to academic, correct?

18 MS. WASHIENKO: Objection.

19 A Right, but that's not the same and that's not fair
20 to me. Right?

21 Q I'm just focusing on the pay aspect.

22 A Yeah, number-wise, you saying same, but it is not
23 the same.

24 Q It is the same for pay though, isn't it?

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

105

1 A Pay, yeah.

2 Q Okay. That's all I was getting at.

3 Did you ever submit a proposal to anyone at
4 UMass. Memorial to substantiate what you were
5 going to use your academic days for?

6 A I did not, but at the same token, everybody new
7 hire, when they came, they got one day without --
8 they haven't proven that they have a proposal,
9 so -- and I was not asking once a week. They were
10 all getting once a week. I was asking 12 days for
11 a year. I didn't ask hand and foot.

12 Q You were told to submit a proposal to substantiate
13 your need for academic days, weren't you?

14 A Yeah.

15 Q And you chose not to, didn't you?

16 A It's not a question of not choosing. I did not.
17 But the same thing applies to the other people
18 too.

19 Q Ma'am, I need to ask you that question. We'll be
20 here for days on end.

21 A That proves the point. I want to answer what I
22 think is correct, that yeah, I did not. To answer
23 the first question, and the substantiate to what I
24 am telling you, people who are just coming out of

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

106

1 training are less experienced than I do, came, and
2 from day one of their employment, they were
3 getting once a week academic day.

4 Q And is it possible --

5 A I don't see any proposal of anybody doing so many
6 things in one day.

7 Q Is it possible, ma'am, that they were doing
8 academic research?

9 MS. WASHIENKO: Objection.

10 A Anything is possible.

11 Anything is possible, but as far as I'm
12 concerned, I was not treated fairly. That's all
13 my point is. Okay?

14 Q I'm going to move to strike. I'm going to ask you
15 to focus on my question because you're -- your
16 attorney can ask you questions at the end of the
17 deposition where you can get out your story.

18 I'm going to ask you to just focus on my
19 question or we'll be here days on end. Okay.

20 So in terms of academically, you said people
21 were given academic days when they arrived from
22 day one. Name anyone who was given an academic
23 day who had no academic pursuit.

24 MS. WASHIENKO: Objection.

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

107

1 A There are too many of them.

2 Q Can you name anyone by name who had no academic
3 pursuits, please?

4 A How can you know? They just changed, so how can I
5 know whether they have academic pursuit or not. I
6 can't.

7 Q When you were there, who are you claiming was
8 given academic days who did no academic work?

9 A There were three people I remember. I don't
10 actually remember their name right off the bat,
11 but I know they did not.

12 Q So at this point in time, you can't name anyone
13 who was granted time for academics who didn't do
14 something in the realm of academics?

15 MS. WASHIENKO: Objection. Bob, if you have
16 a list of employees?

17 MR. KILROY: No, I'm allowed to ask her a
18 question. She's the one who's telling me she has
19 comparatives.

20 Q At this point, if a jury -- you were testifying in
21 front of a jury, you would have to tell them, I
22 can't name anyone who received academic days and
23 didn't pursue academic pursuits.

24 A I know there was Gunjan. I forget her last name,

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

108

1 in memo. There are a lot of people, but offhand,
2 I can't tell. Okay?

3 Q Can you spell that name for me, Gunjan?

4 A Gunjan. I see. G-U-N-J-A-N, something like that.

5 Q That's the only person you can remember by name,
6 is that right?

7 A Yeah, because I'm not keeping tab of them.

8 Q Now, you were never granted academic time by any
9 department chair, were you?

10 A Please repeat the question?

11 Q You were never granted academic time by any
12 department chair, were you?

13 A I was. When I got hired in 1992, just like
14 everybody else, I was getting once a week academic
15 day.

16 Q And when did that stop?

17 A And that got taken when other people came, and I
18 never pursued it so I just -- different story. So
19 I should have been grandfathered.

20 Q Did it stop in the '90s?

21 A I don't recall when.

22 Q Okay. But you weren't granted academic time by
23 Dr. Ferrucci before Dr. Rosen took over, were you?

24 A That's what I'm saying, that in between it got

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

109

1 lost. But I should have been grandfathered.

2 Q You should have been grandfathered based on what?

3 MS. WASHIENKO: Objection.

4 Q What policy grandfathers you?

5 A What policy? That's how I was hired.

6 Q No, what policy -- look at the academic policy.

7 MS. WASHIENKO: Objection.

8 Q Show me where it says you get grandfathered.

9 MS. WASHIENKO: Bob, objection. My client
10 answered that that's how she was hired.

11 MR. KILROY: Yes, that's fine.

12 Q Look at the academic policy and tell me if there's
13 anywhere that says you get grandfathered.

14 A It doesn't say, but academic policy, academic
15 policy, all that what they are saying they are
16 doing, I haven't seen them. Not only that, then
17 they leave the department of --

18 Q Ma'am, I'm going to stop you. You're not
19 answering my question, and I don't want you to
20 keep running on with a speech. I want you to
21 focus on my questions.

22 So name anyone who was grandfathered who got
23 academic time based on being, in your words,
24 "grandfathered."

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

110

1 A Nobody at least anymore from my time.

2 Q Okay. So no one got grandfathered that you're
3 aware?

4 MS. WASHIENKO: Objection.

5 Q Did you want them to make an exception for you
6 based on your age?

7 MS. WASHIENKO: Objection.

8 A Yeah, there were rules, 20 plus years of service
9 and all that. Not only that, for my disability, I
10 wanted them to give me a break.

11 Q I didn't ask you that question.

12 Did you want them to treat you better than
13 others based on your age with respect to academic
14 time?

15 A Please repeat the question?

16 Q Did you want them to treat you better than others
17 based on your age with respect to academic time?

18 A No.

19 Q Okay. So you didn't want them to make an
20 exception based on your age?

21 A I wanted to make an exception for my disability
22 because working 15 days in a row, impossible.
23 very difficult. Okay.

24 Q So you wanted an exception based on your

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

111

1 disability. What was it about your disability
2 that prevented from you doing your job?

3 MS. WASHIENKO: Objection. Dr. Desai, you
4 can answer.

5 A I am doing five days of clinical work, then I'm
6 doing the weekend. Weekend is busy with lot of
7 CT. And then I'm doing another five days before I
8 get a break, and it just was too much for me.

9 Q And you submitted a doctor's note saying that you
10 needed to be able to take time off because of the
11 disability, is that right?

12 A My thing is known for 20 years.

13 Q Did you submit a doctor's note saying you needed
14 time off, ma'am?

15 A Not to my knowledge.

16 Q No, you didn't.

17 And did you ever tell Dr. Rosen you were
18 incapable of performing your clinical job because
19 of your heart condition?

20 MS. WASHIENKO: Objection.

21 A That's not the correct word. It is not incapable.
22 It is tired.

23 Q So you were capable -- hold on, so you were
24 capable of performing your job despite the heart

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

112

1 condition, is that right?

2 A Yeah, but I used to get tired.

3 Q Right. And do you think other people get tired
4 working?

5 MS. WASHIENKO: Objection.

6 A Yeah, they were using their academic time in the
7 following week.

8 Q What were you going to do --

9 A They got tired. They all got tired and they told
10 me.

11 Q Ma'am, no question is pending.

12 what were you going to do with your academic
13 time?

14 A Take a break so I can recuperate for the next day.

15 Q You wanted a day off, didn't you, ma'am?

16 MS. WASHIENKO: Objection.

17 A Don't give me that.

18 Q Ma'am, you wanted a day off, didn't you?

19 MS. WASHIENKO: Objection.

20 Q Answer the question, please.

21 MS. WASHIENKO: Objection. I'm going to
22 instruct my client not to answer.

23 MR. KILROY: No, that's a fair question,
24 Pat.

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

113

1 Q You wanted a day off from work, didn't you?

2 MR. KILROY: There's no privilege. I'm not
3 harassing. I'm asking a fair question.

4 Q You wanted a day off from work. That's why you
5 wanted the academic day, isn't that right?

6 MS. WASHIENKO: You can answer, Dr. Desai.

7 A Okay. Repeat the question, please?

8 Q You wanted a day off from work, that's why you
9 requested academic time, isn't that right?

10 A I wanted a break from the clinical work so I can
11 recuperate.

12 Q And that's the same thing as a day off, isn't it,
13 ma'am?

14 A But everybody else is doing the same because they
15 are tired. They just using the academic day. And
16 it is a fact. They told me, my colleague. I have
17 a good relation with all my colleagues and they
18 told me that, Only day I can survive because I can
19 use academic day. So I'm not asking anything
20 different. And they were getting once a week, by
21 the way, and I am asking --

22 Q I don't have a question pending. Tell me the name
23 of the colleague who was committing fraud at
24 UMass. Memorial by taking days off and not using

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

114

1 an academic day correctly. what colleague are you
2 referring to?

3 MS. WASHIENKO: Objection. I'm going to --

4 Q You just told me there is a colleague who is
5 taking academic time and not using it for academic
6 purpose. Someone is committing fraud. Who are
7 you referring to?

8 MS. WASHIENKO: Objection.

9 A I don't have the name.

10 Q You don't have the name? You said it was your
11 best friend.

12 A No, it not my best friend. Almost everybody,
13 because everybody has to recuperate. UMass. is a
14 busy place.

15 Q Tell me the names of the doctors you claim who
16 have put --

17 MS. WASHIENKO: Objection.

18 Q -- who have put in for academic time, and who are
19 not using it correctly? who are you claiming is
20 not using the time correctly?

21 MS. WASHIENKO: Objection.

22 A I don't have the list.

23 Q You don't have any?

24 A I don't have the list. The department already

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

115

1 knows --

2 Q Tell me anyone, ma'am.

3 A -- who they are using academic time, so I don't
4 have to tell that.

5 Q Okay. Let's -- I'm going to change the question.
6 I want you to testify -- and it's going to be in
7 the record when we're in front of a jury. When I
8 ask you this question in front of a jury, I want
9 you to identify the people you claim who are being
10 granted academic time so they can just take days
11 off and not perform academic work, who are you
12 claiming?

13 MS. WASHIENKO: Objection.

14 A I don't have a list.

15 Q So you can't identify anyone who got the deal that
16 you want, isn't that right?

17 MS. WASHIENKO: Objection.

18 Q Am I correct you can't identify anyone who
19 received the deal that you've been asking for?

20 A The department already knows who gets the academic
21 day. I don't have to tell you the list, but
22 that's how I feel.

23 Q Ma'am, you do have to answer my questions. We can
24 take it to a judge.

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

116

1 MS. WASHIENKO: Let's take a break, Bob.
2 Let's take a break.

3 MR. KILROY: Okay. Can I get an answer to
4 this question before we break, Pat?

5 A I don't have a list. I do not have the list.

6 Q You told me you don't have to tell me, that UMass.
7 already knows. I'm telling you we don't know, so
8 I'm asking you for who were you --

9 MS. WASHIENKO: This sounds like another
10 question. Can we take a break, Bob?

11 MR. KILROY: Yes, go ahead. We can.

12 MS. WASHIENKO: Thank you very much.

13 (Recess taken.)

14 BY MR. KILROY:

15 Q If I could refer folks back to Exhibit 12. I'm
16 hoping everyone still has it up on eDepoze?

17 A Okay.

18 Q I'll direct your attention to paragraph 3,
19 numbered paragraph 3 on the page. It's actually
20 Roman numeral I, then subparagraph 3, last
21 sentence of that paragraph.

22 A Hold on, I'm not on the correct one. So, I, and
23 which one?

24 Q Paragraph 3.

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

117

1 A On the first page, right?

2 Q Yes.

3 A Number 3. "In order to be eligible"?

4 Q Yes. And last sentence of that paragraph says,
5 "For faculty with two or more years of service,
6 allocation will be based on prior activity and
7 mutually agreed upon future activity."

8 A Correct.

9 Q Am I correct that, one, you had no prior activity
10 as of 2015 on for academic service, academic
11 activity, that is, and you never mutually agreed
12 with your chair on future activity?

13 A Yes.

14 Q And you would agree that within the radiology
15 group, under the leadership of Dr. Rosen, that
16 other radiologists who were female were granted
17 academic days, correct?

18 A Yes.

19 Q And other radiologists who were the same race and
20 national origin as you were granted academic days,
21 correct?

22 A Yes.

23 Q And other radiologist over the age of 40 were
24 granted academic days, right?

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

118

1 A Yes.

2 Q And other radiologists who might have had a health
3 condition were granted academic days as well,
4 right?

5 A I do not recall about them.

6 Q You don't know?

7 A Don't recall. Yeah, I don't know about them.

8 Q Can you identify any radiologist within the group
9 under Dr. Rosen who had no scholarly activity, no
10 research activity like you, but were granted
11 academic time?

12 A Please repeat the question?

13 Q Sure. Can you identify any radiologist under
14 Dr. Rosen who had no scholarly activity and no
15 research activity, same as you, who was
16 nonetheless granted academic time?

17 A I do not recall.

18 Q Okay. And Dr. Rosen, during several meetings with
19 you over time, discussed this academic time policy
20 with you, right?

21 A Yes.

22 Q And he specifically told you, that you could
23 submit a proposal in writing for how you want to
24 use any academic days that you are proposing,

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

119

1 correct?

2 A Yes.

3 Q And you opted not to submit a written proposal to
4 him, right?

5 A Yes.

6 Q Under the Academic and Administrative Time Policy,
7 there is a section that deals with administrative
8 time. You did not have any administrative role
9 that would qualify you for administrative time,
10 right?

11 A Yes.

12 Q Yes, meaning you didn't have an administrative
13 role?

14 A No, I did not.

15 Q Okay. And if we continue on in the document to
16 section Roman numeral III, which I believe is the
17 second page, paragraph 2 under Roman numeral III,
18 states, "Requests to attend meetings/conferences
19 using accumulated academic/administrative time
20 must be requested within the context of vacation
21 planning, subject to vacation request deadlines
22 and approved by the Division Chief."

23 Had you ever complied with that by
24 submitting requests in the context of vacation

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

120

1 planning?

2 A To the best of my knowledge, yes.

3 Q And were you denied your request for a conference
4 when you submitted correctly within the context of
5 vacation planning?

6 A Not that I can recall.

7 Q And you believed, based on your testimony earlier,
8 that you should have been granted academic time
9 based on being grandfathered or based on your
10 seniority? Do I have that right?

11 A Yes.

12 Q And yet, you can't identify any radiologist whom
13 Dr. Rosen granted academic time based on
14 seniority, correct?

15 A Because there is nobody right now, from my time.

16 Q And there is nothing in the policy that specifies
17 that a radiologist should be granted academic time
18 based on seniority, correct?

19 A Yes.

20 Q Meaning you agree with me, the policy doesn't
21 address that?

22 A I agree.

23 Q I'm going to go to the next Exhibit, Exhibit 13.
24 You'll see it in just a second.

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

121

(Exhibit 13 marked for identification and displayed.)

Q And it is a letter dated February 13, 2008 from a Dr. Oscar E. Starobin, S T A R O B I N, addressed To Whom It May Concern. To whom, if anyone at UMass. Memorial, did you provide this letter to?

A I don't recall. This is so long ago. I don't recall.

Q Do you recall providing it to anyone at UMass. Memorial?

A I don't recall.

Q And this letter indicates that you had a permanent pacemaker implanted six years prior to the letter, correct?

A Yeah.

Q And the letter indicates that your cardiac status, "may lead to partial or complete disability in the future." Right?

A Yes.

Q Did you ever become partially or completely disabled as the letter forecast?

A Only partially because when I get tired, I get a lot of spells. So that's the thing, it has been since.

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

122

1 Q Did you ever provide notice via a letter, an
2 updated letter to UMass. Memorial that you had a
3 change in status, health condition status in any
4 way?

5 A Just the recertification.

6 Q But at no point in this letter is there any
7 request for any type of accommodation for you,
8 right?

9 A To the best of my knowledge, no.

10 Q In fact, all it says is there's concern you might
11 need to be accompanied at home in the evenings,
12 right?

13 A Yeah.

14 Q There's nothing that says that you're incapable of
15 any of the essential functions of your job at
16 UMass. Memorial. Fair?

17 A Yes. The main thing is, I can do the work, but if
18 it is heavy work, then I get the spell. That's
19 the main thing.

20 Q Right. But you never requested an accommodation
21 of any kind to change your work hours, for
22 instance, based on your medical condition, isn't
23 that right?

24 MS. WASHIENKO: Objection. You can answer,

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

123

1 Dr. Desai.

2 A No, I did not, except for I was asking for
3 academic time.

4 Q Right. But you were asking for academic time for
5 a day off, not to do academics, right? Correct?

6 A I was asking for break time, yes.

7 Q Okay. And Dr. Rosen actually offered you the
8 chance for a lighter schedule if you desired it,
9 and you turned him down, right?

10 A Yes. He asked me to go part time or go locum.

11 Q Right. You could have had days off that you were
12 seeking based on being tired, but you chose not to
13 accept that offer?

14 A At the time.

15 Q Well, at all time, you never took him up on that
16 offer, right?

17 A Because I did not want to go to part time at the
18 time.

19 Q Right. You just wanted to have days off while
20 still getting paid, right?

21 MS. WASHIENKO: Objection, but you can
22 answer, Dr. Desai.

23 Q Was that a correct statement I made?

24 A Repeat the question again, please?

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

124

1 Q My statement was, you chose not to accept the
2 offer for per diem or locum status; instead, you
3 just wanted to have days off while still being
4 paid full?

5 MS. WASHIENKO: Objection, but you can
6 answer, Dr. Desai.

7 A That's not -- I don't agree. Everybody was
8 getting academic day, and I was -- once a week,
9 and I was only asking for 12 days, so.

10 Q Right. You were asking for 12 days off where you
11 would do no work, right?

12 A For clinical. I probably come and do other stuff
13 but not -- yeah. And that's the same thing that
14 is happening with other people too.

15 Q Okay, but I asked you to name the other people who
16 were getting days off and not doing work on their
17 academic days, and you wouldn't tell me anyone.

18 A I don't know what they are doing. I only know who
19 gets academic day.

20 Q So in terms of identifying someone who has
21 academic days but doesn't pursue academic research
22 or scholarly activities, you would have to tell
23 the jury, I don't know what they do for their
24 academic time?

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

125

1 MS. WASHIENKO: Objection. You can answer.

2 A I cannot. I can't speak for them what they do.

3 Q I'm going to turn my attention now to your
4 Complaint that was filed in this action, and
5 specifically Count 1 of the Complaint. So Count 1
6 of the Complaint is an allegation of
7 discrimination that you've made based on race,
8 national origin, and gender, and you've made it
9 against UMass. Memorial Medical Center, University
10 of Massachusetts Medical School, UMass. Medical
11 Group, Marlborough Hospital, Dr. Rosen and
12 Dr. Tosi.

13 what is your race, ma'am?

14 A I'm Asian.

15 Q Asian. And what is your national origin?

16 A Indian.

17 Q Indian. All right.

18 I'm going to begin with referencing the
19 Complaint under this Count to your compensation.

20 who made the decision as to the setting of
21 your compensation, do you know?

22 A We did it together with my attorney.

23 Q With who?

24 A My attorney.

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

135

1 don't have?

2 A I did not say that.

3 Q It's a question. Do you think you should be or do
4 you think that's a distinguishing feature?

5 A You say if they have a little supervision they
6 should be paid more? That's what you are asking,
7 right, the question?

8 Q Yes. That's what I'm asking.

9 A Yes. And then the same token, they do less
10 clinical work.

11 Q Right, but you agree that they are getting paid
12 for their leadership role?

13 A Yes.

14 Q Okay. Now, in your Complaint, as I recall, you
15 only identify one comparative. You identify the
16 white male who is being paid more than you in your
17 Complaint as Aaron Harmon.

18 Do you recall that?

19 A Yes.

20 Q And he has a skill set you don't have, isn't that
21 right?

22 A He is interventional radiologist.

23 Q He is an interventional radiologist, which
24 requires additional training, right?

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

136

1 A I don't agree.

2 All the radiologist, they have to --

3 Q Is it your testimony that you should be paid the
4 same as interventional radiologists?

5 A That is my testimony. I'm telling you that all
6 the radiologists in general, they have to go
7 through the same training, so many years, and
8 everybody looks at the images.

9 Q Can you answer my question, please; is it your
10 testimony that you should be paid the same as
11 interventional radiologists?

12 A Repeat the question?

13 Q Sure. Is it your testimony that you should be
14 paid the same as an interventional radiologist
15 despite not being an interventional radiologist?

16 A Yes.

17 Q Okay. And have you ever looked at the prevailing
18 market data for interventional radiologists versus
19 general radiologists or chest radiologists?

20 A Yes.

21 Q And fair to say, interventional radiologists are
22 paid more, aren't they?

23 A Yeah. But it is not justified because everybody
24 does -- just happens they do on a different --

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

137

1 they get trained -- it is just everybody, all the
2 radiologists go through the basic training, go --
3 they have to have all the same qualification, and
4 then, they'll be doing just a different part of
5 the body; they analyze it, make the diagnosis, and
6 give the written report. So it just a different
7 unique setting they are working.

8 Q Sure, and a cardiac surgeon --

9 A Plus to how many years too, the physician, whether
10 somebody just came out of the training, so
11 assistant associate, I think they should be the
12 same.

13 Q And ma'am, a cardiac surgeon goes through training
14 just like an orthopedic surgeon, but I'm betting
15 cardiac surgeons make more. Do you think those
16 should be level playing fields as well; they all
17 should make the same?

18 MS. WASHIENKO: Objection.

19 A It is not my place to decide for them.

20 Q Okay. But it's your place to decide for the
21 entire market of interventional radiologists
22 versus general radiologists?

23 MS. WASHIENKO: Objection.

24 A I didn't say that.

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

138

1 Q I'm sorry? Your answer?

2 A Please repeat the question?

3 Q But you believe that it's okay for you to decide
4 for the market in terms of interventional
5 radiologists should not be paid more than general
6 radiologists, is that right?

7 MS. WASHIENKO: Objection.

8 A I believe everybody should be paid the same.

9 Q You recognize interventional radiologists actually
10 invade the body, right?

11 A Yeah. I'm just telling you --

12 Q Ma'am, just answer the question. Do they invade
13 the body or not?

14 A Yes.

15 Q Yes. And do you?

16 A Not right now.

17 Q And you haven't for 15 years, correct?

18 A I'm not.

19 Q And you haven't had privileges, for 15 years at
20 least, to be able to invade a body in the
21 interventional radiologist field, correct?

22 A Yes.

23 Q And so, despite the fact that there is an invasive
24 skill set that one group of doctors have that you

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

155

1 ever interfered with your ability to take time off
2 if you felt you needed a break, isn't that true?

3 A Yes.

4 Q Did you apply for Division Chief Physician,
5 Division Chief of Chest Radiology when it was
6 open?

7 A No.

8 Q Why not?

9 A Because it was automatically, that if you are
10 senior, that you should be a case asked.

11 Q I'm sorry, I didn't mean to interrupt you.

12 Is this similar to your view that you should
13 be grandfathered?

14 MS. WASHIENKO: Objection.

15 A No. Please repeat the question?

16 Q You're saying, based on your seniority, you should
17 have been asked to be given the position. Is this
18 similar to your view that you should have been
19 grandfathered in for academic time?

20 A No, that has been happening in the department.

21 Q So you believe that they should not have
22 interviewed for the position but they should have
23 given you the position?

24 A No, they should have asked.

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

156

1 Q And what would you have said?

2 A That depends. But that has happened in other
3 section too.

4 Q Did you believe that you were facing
5 discrimination based on the hire of Dr. Dill in
6 March of 2016?

7 A Yes.

8 Q As Division Chief?

9 You did. So at the time she was hired, did
10 you believe you were facing discrimination?

11 A Yes.

12 MS. WASHIENKO: Asked and answered, but --

13 Q Okay. And on what basis? And by that I mean, was
14 it based on your age, your gender, your race, your
15 color, your disability? What was it?

16 A Everything.

17 Q So just so it's clear, in 2016, you believe that
18 you were facing discrimination based on race,
19 color, national origin, gender, and age based on
20 the hire of Dr. Dill?

21 A Yes.

22 Q Did you complain to anyone about it then?

23 A I did not.

24 Q Can you explain how it is that for two years now,

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

168

1 you -- strike that.

2 Do you think it would have been responsible
3 for you to ask Dr. Rosen why he assigned those
4 workstations as opposed to saying that he is
5 motivated by race?

6 MS. WASHIENKO: Objection.

7 Q You can answer.

8 A I could have asked him.

9 Q On the hire of Dr. Dill, do you know who made the
10 decision to hire her?

11 A I believe Dr. Rosen.

12 Q Okay. So you're not claiming that Dr. Tosi
13 engaged in discrimination in the hiring of
14 Dr. Dill, are you?

15 A I don't think so. No.

16 Q And you're not claiming that the University of
17 Massachusetts Medical School made a discriminatory
18 decision to hire Dr. Dill, right?

19 A No.

20 Q And you're not claiming Marlborough Hospital made
21 a discriminatory decision to hire Dr. Dill,
22 correct?

23 A Yes. They did not.

24 Q So you're claiming instead, Dr. Rosen made a

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

174

1 MS. WASHIENKO: Objection.

2 A I did not talk to them. But I have -- in the
3 department, there were other people who were
4 getting them, so.

5 Q Yes, but we were talking about the trial, Dill and
6 Schmidlin, the ones you identified. So you didn't
7 talk to them about whether or not IT support was
8 available to them during the trial, right?

9 A I did not.

10 Q Now, Count 2 of your Complaint is the Federal
11 Equal Pay Act claim, which means you're claiming
12 that you weren't paid equally to male
13 counterparts, and you named every defendant in
14 this Count. You named the medical group, you
15 named the medical center, Marlborough Hospital,
16 Dr. Tosi, Dr. Brennan, Dr. Rosen, Dr. Dill, and
17 the medical school.

18 Are you claiming every one of those were
19 involved in the decision of the setting of your
20 compensation or the setting of compensation of
21 males?

22 A I don't know exactly who decides, so.

23 I don't know.

24 Q Are you claiming Marlborough Hospital did not pay

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

175

1 you correctly under the Equal Pay Act?

2 A No.

3 Q Are you claiming the University of Massachusetts
4 Medical School did not pay you correctly under the
5 Equal Pay Act?

6 A No.

7 Q Are you claiming Dr. Tosi did not pay you
8 correctly under the Equal Pay Act?

9 A No.

10 Q Are you claiming Dr. Dill did not pay you
11 correctly under the Equal Pay Act?

12 A No.

13 Q Are you claiming Dr. Brennan didn't pay you
14 correctly under the Equal Pay Act?

15 A No.

16 Q Are you claiming UMass. Memorial Medical Center
17 didn't pay you correctly under the Equal Pay Act?

18 A I don't know if they are the deciding factor
19 though, so I cannot tell about that. Probably,
20 but I don't know.

21 Q Are you claiming UMass. Memorial Medical Group
22 didn't pay you correctly under the Equal Pay Act?

23 A To my knowledge, yes.

24 Q Okay. And are you claiming Dr. Rosen didn't pay

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

180

1 A I forgot.

2 Q Okay. And what I said was, male employees paid
3 more than you for substantially equal work. Are
4 you claiming that your work, noninvasive work, is
5 substantially equal to his invasive interventional
6 radiology work?

7 A Like I said before, at the end of the day, we
8 basically kind of do the same thing.

9 Q Kind of similar to, at the end of the day, an
10 orthopedic surgeon cuts on my wrist and a
11 neurosurgeon cuts on my brain? Like that?

12 MS. WASHIENKO: There's no question.

13 Q Is that an appropriate analogy; they are both
14 doing the same thing, performing surgery on the
15 body, just different parts?

16 A That's what I'm saying, that we are taking care of
17 different parts of the body in radiology in
18 general.

19 Q So you would agree that all surgeons should be
20 paid the same as well?

21 MS. WASHIENKO: Objection. You can answer,
22 Dr. Desai.

23 A Yes, it's not my decision what they do.

24 Q Now, you are aware that UMass. Memorial responded

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

181

1 to pay concerns that were raised in 2016 by
2 undertaking an analysis of pay within the
3 radiology department, correct?

4 A Yes.

5 Q And as a result, you received a substantial
6 increase in pay, hadn't you?

7 A I did. I'm trying to think how much. I did. But
8 that was last two years I think it was corrected.

9 Q You had gone from 283,000 to 329,000. That's a
10 pretty substantial increase, correct, from January
11 '17 to March of '17?

12 A Yes.

13 Q And ultimately, you only went to 320 in March
14 because you had sold back call time. Do you
15 recall that?

16 A Just for one year.

17 Q Yes. And that depressed your income somewhat.
18 And then in '18 and '19, you went up to just short
19 of \$340,000. And so for the last three years of
20 your employment with UMass., they had actually
21 undertaken a study and attempted to correct any
22 pay disparities within the radiology group --
23 fair?

24 A Yes.

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

182

1 Q And not only had they undertaken that, but they
2 ensured that you received a sizable increase in
3 salary, right?

4 A Yes. They make same for all the associate or
5 something like that, they did, I think.

6 Q But they tried to make it standard across the
7 board, right?

8 A Yes.

9 Q And ultimately, from January of '17 to when you
10 left, you had received about a 56,000 plus dollar
11 increase in order to address pay disparities,
12 right?

13 A Within the two years, right?

14 Q Yes.

15 A Okay.

16 Q And you would agree that was a substantial
17 increase?

18 A Yes.

19 Q Do you think that was a reasonable approach by
20 UMass. to try and address the pay disparities?

21 MS. WASHIENKO: Objection.

22 A Yes, but how about all the other years I lost?

23 Q Right. I'm not asking about that though.

24 Do you think they acted in good faith when

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

183

1 they tried to address the pay disparities during
2 those last three years of your employment?

3 A Yes.

4 MS. WASHIENKO: Hey, Bob?

5 MR. KILROY: Yes.

6 MS. WASHIENKO: Is there any chance this
7 might be a reasonable time for a break because I
8 could use a bio break?

9 MR. KILROY: Yes, absolutely. This is a
10 good time, Pat.

11 MS. WASHIENKO: Thank you very much.

12 (Recess taken.)

13 BY MR. KILROY:

14 Q All right, Dr. Desai, you all set?

15 A All set.

16 Q In Count 3 of your Complaint, you have a claim for
17 violation of the Americans with Disabilities Act,
18 and is that based on your heart condition?

19 A Yes.

20 Q Okay. And am I right that the only medical
21 documentation you've presented to UMass. Memorial
22 related to your heart condition was Exhibit 13,
23 which you should be looking at currently on the
24 eDepoze, the 2008 letter?

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu Desai, M.D.
September 18, 2020

200

C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

I, Lisa McDonald, Registered Professional
Reporter Certified Realtime Reporter and Notary
Public, in and for the Commonwealth of
Massachusetts, do hereby certify that:

CHARU DESAI, M.D., the witness whose
deposition is hereinbefore set forth, was duly
sworn by me remotely, that I saw a picture
identification for her in the form of her driver's
license, and that the foregoing transcript is a
true and accurate transcription of my stenotype
notes to the best of my knowledge, skill and
ability.

I further certify that I am not related to
any of the parties in this matter by blood or
marriage and that I am in no way interested in the
outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my
hand and notarial seal this 26th day of September,
2020.

Lisa McDonald

Lisa McDonald, RPR, RMR, CRR
Notary Public
My commission expires: May 23, 2025

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Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu S. Desai, M.D.
October 22, 2020

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
CIVIL ACTION NO. 4:19-cv-10520-DHH
* * * * *
CHARU DESAI,
Plaintiff,
vs.
UMass.. MEMORIAL MEDICAL CENTER, INC., et al.,
Defendants.
* * * * *
VOLUME II
CONTINUED DEPOSITION OF: CHARU S. DESAI, M.D.
Conducted Remotely
211 Congress Street, Suite 720
Boston, Massachusetts
Thursday, October 22, 2020 10:04 a.m.

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu S. Desai, M.D.
October 22, 2020

280

1 with the email and I have not.

2 Q. I didn't ask you if you communicated with
3 emails. You're -- you're being told by your chair
4 to do so and he's telling you that you need to do
5 so, isn't that right?

6 MS. WASHIENKO: Objection.

7 But you can answer, Dr. Desai.

8 A. He's just saying -- yeah. He's saying to
9 do so because, apparently, to receive the email,
10 that's what the idea is in regards to.

11 Q. He also counseled you that you should not
12 allow work flow problems to go unaddressed,
13 correct?

14 MS. WASHIENKO: Objection.

15 You can answer.

16 A. We usually call the people who -- the IT
17 people. There is -- we don't call Dr. Rosen.

18 Q. I -- I didn't ask you that question. My
19 question was, did he counsel you that you should not
20 let work flow problems go unaddressed?

21 MS. WASHIENKO: Objection.

22 But you can answer, Dr. Desai.

23 A. Yes.

24 Q. He also counseled you to ensure that you

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu S. Desai, M.D.
October 22, 2020

281

1 enter quality assurance issues into the Peer-View
2 system, correct?

3 A. Yes.

4 Q. And he spoke with you concerning the
5 academic time policy, didn't he?

6 A. Yes.

7 Q. He specifically advised you, if you
8 believed academic time for you was justified, then
9 you should identify in writing what activities you
10 intended to undertake and then he would discuss
11 additional time for those specific activities,
12 didn't he?

13 MS. WASHIENKO: Objection.

14 You can answer.

15 A. Yes.

16 Q. And you never responded in writing as your
17 chair directed, did you?

18 A. Not that I recall. But how about people
19 who got hired --

20 Q. There's no question pending, Dr. Desai.

21 A. No. But to have --

22 Q. Dr. Desai, there's not a question pending.
23 I'm moving on.

24 A. You can move on, but the new people who

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu S. Desai, M.D.
October 22, 2020

303

1 MS. WASHIENKO: Objection.

2 A. Yes.

3 Q. And, as long as you were granted the
4 intermittent FMLA, you were capable of performing
5 the essential functions of your job as a
6 radiologist, weren't you?

7 MS. WASHIENKO: Objection.

8 A. Yes.

9 Q. Down on the bottom of the first page it
10 says, "Please, remember it is your responsibility to
11 follow your company's normal absence reporting
12 procedures." Did you follow the company's absence
13 reporting procedures correctly?

14 MS. WASHIENKO: Objection.

15 A. Yeah. When I was completely not able to go
16 to work, yes. We do with the phone, yes. But
17 you -- the thing is, even with the spell, I came to
18 work. That is --

19 Q. I didn't ask you that, ma'am.

20 A. Yeah, but you should know that.

21 MS. WASHIENKO: I'll circle back with you,
22 Dr. Desai.

23 THE WITNESS: Okay.

24 Q. I'm showing you Exhibit 31.

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu S. Desai, M.D.
October 22, 2020

304

(Document marked as Exhibit 31
for identification)

BY MR. KILROY:

Q. Do you recognize that document?

A. Let me see. Just one page, yeah.

Q. Yes.

A. Okay. So what is -- this is my own note.
I think we probably gave it to you because you say
you have to --

Q. But that's your handwriting, correct?

A. It is.

Q. On what basis do you claim you should have
been exempted from call requirements within the
radiology department?

A. Because of how many years of -- of work.
That's what I'm -- see, originally when I started
the job, it was five call per year and one holiday
when I took the job. Then it become ten call per
year and two holiday.

Q. Is there a policy that says that you get
exempted from call in radiology based on number of
years working at UMass. Memorial?

A. Yes, there is, but it is -- there are, I
think, 20 years, and there is age. That's kind of

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu S. Desai, M.D.
October 22, 2020

305

1 policy but I -- I didn't -- I was not that age, but
2 I finished more than my --

3 Q. So you weren't eligible to be exempted --

4 A. Yeah.

5 Q. -- from call-in policy?

6 A. Yes, but I was asking him if he could -- he
7 would reduce the call or --

8 Q. You were asking for an exception to be made
9 to the --

10 A. I did.

11 Q. -- policy, correct?

12 A. I did.

13 Q. Was an exception made for anyone else, to
14 your knowledge?

15 A. Nobody had that seniority and they are not
16 around. Nobody is around.

17 Q. So the answer is --

18 A. I was the last -- I was the last one, so I
19 think that was to get rid of the last one.

20 Q. So your answer is you're not aware of an
21 exception being made to the call policy in radiology
22 for anyone, correct?

23 A. Not to my knowledge. Yes.

24 Q. Bullet Point 5, could you read that to me,

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu S. Desai, M.D.
October 22, 2020

306

1 please.

2 A. You mean No. 5 in here?

3 Q. Yes.

4 A. I'm saying the newcomers are getting the
5 same pay as I do after -- after 26 years, may pay
6 same. I am associate. The others, just after the
7 training, they are assistant. Does that make sense?
8 No, it does not.

9 Q. So you wanted to be paid more based on your
10 years of service?

11 A. It's not a question of paying more. You --
12 in standard form, you figure that assistant and
13 associate, plus 26 years, not only they are not same
14 pay, they are more than we. How do you justify
15 that?

16 Q. I'm just asking, did you want to be paid
17 more based on your years of service?

18 A. It should have been difference for
19 associate and the years of service, both.

20 Q. Okay. Bullet 6 says, "Discrimination,
21 unfairly treated." what are you referring to
22 there?

23 A. Same thing. Newcomers are getting academic
24 time from pay their first week. On what basis? Did

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu S. Desai, M.D.
October 22, 2020

307

1 they prove it to you that they wrote -- they wrote
2 time paper or they did the research? No. And
3 when -- when we ask, you know what was the answer?
4 That is the market. If you don't give it, they
5 won't come.

6 By the way, most of them left. 20 people
7 left in, like, two and a half years --
8 approximately, two and a half to three years time.
9 So you're not giving them more time. They are not
10 lying to you. They are not -- so whatever.

11 Q. On day one, I asked you to identify anyone
12 who had academic time who had never performed
13 research or scholarly activities of any kind, and
14 you couldn't identify anyone. Can you identify
15 anyone now?

16 A. No. I -- I did not.

17 Q. You've answered the question.

18 A. The -- I don't want to identify because
19 that day you say that you will take action against
20 and this --

21 Q. Ma'am, you don't have a choice. Are you
22 saying you know someone who was given academic time
23 who had no academic responsibilities and no academic
24 research?

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu S. Desai, M.D.
October 22, 2020

308

1 MS. WASHIENKO: Dr. Desai, I'll circle back
2 with you at the end on that.

3 MR. KILROY: I'm sorry, Pat. I couldn't
4 hear you.

5 MS. WASHIENKO: I said, Dr. Desai, I'll
6 circle back with her in the end on that.

7 BY MR. KILROY:

8 Q. Dr. Desai, are you identifying -- can you
9 identify someone that you're claiming received
10 academic time who was not entitled to it under the
11 policy?

12 A. I can't.

13 Q. Okay.

14 A. I won't. You already have the schedule who
15 gets academic time. You already know who is doing
16 research and not doing research. I can't imagine
17 people just got hired, gets academic time the
18 following week, and they already produced a paper.
19 No. Unbelievable.

20 Q. When you state discrimination, on what
21 basis -- and by that I mean, are you claiming
22 discrimination as of May 25th, 2017, based on your
23 age, based on your race, your color, your gender,
24 your national origin? What are you claiming was in

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu S. Desai, M.D.
October 22, 2020

309

1 your mind at that time?

2 A. All of it.

3 Q. Okay. So, as of May 25th, 2017, you claim
4 you are basing discrimination based on age, race,
5 color, national origin, and disability, correct?

6 A. Yes.

7 Q. After May 25th of 2017, what actions are
8 you claiming were discriminatory? So nothing prior
9 to May 25th, '17. I just want to know after
10 May 25th, '17. Was there anything new after
11 May 25th, 2017, that you claim was discriminatory?

12 A. Not that I recall. The same I already
13 stated.

14 Q. Well, I'll try and refresh your
15 recollection. Aren't you claiming the termination
16 was discriminatory?

17 A. Yeah. That we already discussed before.

18 Q. Okay. I -- I didn't ask you this question
19 before. I'm asking you this question. You've told
20 me that you believed you were facing discrimination
21 as of May 25th, 2017, on age, race, color, national
22 origin, gender, and disability. Now, I'm -- I'm
23 putting a dividing line in time between May 25th,
24 '17, backwards and May 26th, 2017, forward. I want

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu S. Desai, M.D.
October 22, 2020

310

1 to know what new happened after May 25th, '17, that
2 you claim was discriminatory on any of those bases.

3 MS. WASHIENKO: Objection.

4 You can -- you can answer, Dr. Desai.

5 A. The -- in the past, I haven't seen anybody
6 tell me they'd like me on the call-in thing and all
7 that and did all the fraudulent independent review
8 and all of that. So that is -- that is all -- it is
9 already discussed before as far as I'm concerned.

10 Q. Okay. So -- so beyond, and meaning closer
11 in time after May 25th, 2017, you're claiming the --
12 the quality investigation and the termination were
13 discriminatory. Anything else?

14 MS. WASHIENKO: Objection.

15 You can answer.

16 A. Yeah. The pay scale, the pay was
17 targeting -- was discriminatory, too.

18 Q. Why?

19 A. Yeah. I can't list the all the things
20 right now.

21 Q. Ma'am, This is my chance to ask you under
22 oath the basis for your claims. This is an
23 important question.

24 A. Yeah. I thought we already discussed all

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu S. Desai, M.D.
October 22, 2020

311

1 of that before.

2 Q. No. I did not ask you for the difference
3 between prior to May 25th, '17, and after. I have a
4 document in your own handwriting where you're
5 claiming you were facing discrimination as of
6 May 25th, 2017. You told me all the bases, every
7 basis that you claimed in this case. I want to know
8 what happened after that that you claim is
9 discriminatory. All I know right now based on your
10 under oath testimony is the termination and the
11 investigation. Is there anything else?

12 MS. WASHIENKO: Bob, I think that Dr. Desai
13 in day one of her deposition -- I think she
14 testified day one of her deposition and today that
15 the workstation was an issue, that the academic days
16 were an issue.

17 MR. KILROY: Well, let her testify to that,
18 Pat. She's testified in general, but I want to
19 know, like, when it happened. I've heard the
20 workstation was in '16; I've heard it was in May of
21 '17.

22 MS. WASHIENKO: Well, it continued until
23 she left because she was never given a workstation.
24 I -- I -- I think that's pretty clear.

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu S. Desai, M.D.
October 22, 2020

312

1 BY MR. KILROY:

2 Q. Do you agree with that, Dr. Desai, that
3 you're claiming, after May 25th, 2017, you had asked
4 again for a workstation despite telling me
5 previously me you only asked one time?

6 MS. WASHIENKO: Objection.

7 A. I -- that meeting I asked. After that, I
8 did not ask as far as I recall. See, this is going
9 back to the day. It is not easy to remember all
10 that.

11 Q. Okay. Is there anything else you want to
12 tell me that you thought was discriminatory that
13 first occurred after May 25th, 2017?

14 A. Not that I recall. We already discuss
15 about the other stuff, the pay and all of that.

16 (Document marked as Exhibit 32
17 for identification)

18 BY MR. KILROY:

19 Q. I'm showing you Exhibit 32. This is a
20 letter dated February 16th, 2017. Let me know when
21 you see it.

22 A. Yes, I have the document.

23 Q. All right. And this is a letter to you
24 informing you that there was a new salary structure

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu S. Desai, M.D.
October 22, 2020

313

1 being implemented in the department of radiology
2 that would be effective May -- I'm sorry --
3 March 1st, 2017, correct?

4 A. Yes.

5 Q. And you were getting a sizable salary
6 increase then, right?

7 A. Yes, because I was on the pay all the other
8 years.

9 Q. And the new salary structure that was put
10 in place, fair to say it was responsive to
11 complaints that had been made about differences in
12 salary amongst physicians in radiology, right?

13 A. I think so.

14 Q. But you hadn't complained as of that date,
15 had you?

16 A. I don't remember this date I complain. I
17 complain that we already saw the thing.

18 Q. Okay. Do you remember that male doctors
19 were complaining about their salaries at this
20 time?

21 A. Please, repeat the question.

22 Q. Do you remember that male doctors were
23 complaining about their pay?

24 A. Yeah. That was -- I don't remember the

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu S. Desai, M.D.
October 22, 2020

314

1 date, but yes. They went, actually, to Dr. Tosi and
2 all of that. Yes.

3 Q. And those male doctors included white male
4 doctors, didn't they?

5 A. Some.

6 Q. And younger, doctors younger than you, male
7 white younger doctors, right?

8 A. Yeah. Younger than I am.

9 Q. And fair to say that this new salary
10 structure was intended to try and address the
11 differences in pay that existed across the
12 department, right?

13 A. I think so.

14 Q. Are you claiming the new structure was
15 discriminatory in any way?

16 A. I think, in my case, I can't say that.

17 Q. You can or you can't?

18 A. I -- I cannot say that it is -- it looks
19 okay here because I don't know about the other
20 people but I -- I lost a lot of money previous years
21 because I was underpaid.

22 Q. Okay. would you agree that, once UMass.
23 Memorial undertook this analysis to put in a new
24 salary structure, that they made reasonable progress

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu S. Desai, M.D.
October 22, 2020

315

1 with your pay to try and eliminate differences in
2 pay?

3 MS. WASHIENKO: Objection.

4 You can answer.

5 A. They did. They did.

6 Q. I'm sorry, Dr. Desai. I didn't hear your
7 answer.

8 A. They did.

9 Q. Okay. They did.

10 And, would you agree that they were acting
11 in good faith when they were addressing these pay
12 differences?

13 MS. WASHIENKO: Objection.

14 But you can answer.

15 A. Yes, they did.

16 Q. In the interest of time, I'm going to skip
17 over Exhibit 33 and go to Exhibit 34.

18 (Document marked as Exhibit 33
19 for identification)

20 BY MR. KILROY:

21 Q. Exhibit 34, Dr. Desai, is a --

22 A. I don't have it. I don't have it.

23 MS. WASHIENKO: It hasn't shown up yet,
24 Bob. 33 showed up.

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu S. Desai, M.D.
October 22, 2020

316

1 BY MR. KILROY:

2 Q. Do you have it or no?

3 A. You want to skip the 33, right?

4 Q. I will skip 33. Oh, you know what; it
5 showed up as 33. It must have changed the numbering
6 automatically on us.

7 MS. WASHIENKO: Okay.

8 MR. KILROY: Let me just go back and look
9 for a second. That's weird. Yeah. All right. So
10 it did. So it's listed as Exhibit 33 now. I'll
11 just have to adjust my outline.

12 Q. So Exhibit 33 is a faculty annual
13 performance for you, Dr. Desai from July 1, 2016, to
14 June 30, 2017. Do you see that?

15 A. Yes.

16 Q. And I'll let you scan through it. Fair to
17 say this shows us another year where you haven't
18 recorded any continuing medical education? Is that
19 right?

20 A. Yes.

21 Q. And it's another year that's gone by with
22 no research, creative, or scholarly activities
23 recorded for you, right?

24 A. Yes.

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu S. Desai, M.D.
October 22, 2020

317

1 Q. Another year where there's been no
2 professional development activities recorded for
3 you, correct?

4 A. Yes.

5 Q. And, once again, Dr. Rosen notes that he
6 spoke with you about the academic time policy,
7 right? It's on the last page.

8 A. Yes. The same thing, yes.

9 Q. All right. And, once again, this is where
10 you want to be granted academic time without
11 actually performing academic duties, right?

12 MS. WASHIENKO: Objection.

13 But you can answer.

14 A. I was only asking for 12 days per year.

15 Q. Ma'am, just answer my question. Do you
16 remember my question?

17 A. Once, and I was speaking by the -- I got
18 the teacher of the year award, too.

19 Q. Did you hear my question, ma'am?

20 A. Yeah. I heard. You would -- go ahead.
21 You can ask again.

22 Q. Once again, you wanted to be granted
23 academic days without needing to actual perform
24 academic duties under the academic time policy,

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu S. Desai, M.D.
October 22, 2020

318

1 correct?

2 MS. WASHIENKO: Objection.

3 But you can answer, Dr. Desai.

4 A. Yes. So were the other people were getting
5 it without doing the academic duties.

6 Q. And -- and, once again, despite your chair
7 telling you to submit a proposal in writing in the
8 past, you never submitted a proposal in writing for
9 what you would do with the academic time, isn't that
10 right?

11 A. Yes. Same with the newcomers. They did
12 not give any proposal and all of that. They were
13 getting once a week. I am asking 12 per year. I am
14 not asking (inaudible). And I should have been
15 grandfathered because that was given to me when I
16 started the job.

17 Q. Ma'am, you keep referencing -- you keep
18 referencing newcomers. I asked you to identify
19 anyone who was granted academic --

20 A. The department already knows.

21 Q. Let me finish.

22 A. We will give you the list if you want.

23 Q. Let me finish.

24 A. The whole -- basically, whole department.

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu S. Desai, M.D.
October 22, 2020

355

1 A. Oh, I was not reviewing patient chart. I
2 was checking the deal thing which I came across when
3 I was cleaning my office. I told you that, and then
4 she is saying everything is significant, which is
5 not. It is absolutely not, and one of them she laid
6 down by herself. You know, that is -- because I had
7 to pick it up myself, too, when I come across
8 something. So there is nothing I did wrong here.

9 Q. You completed the annual HIPAA training,
10 correct?

11 A. Yes.

12 Q. And your testimony under oath is that you
13 didn't understand medical record numbers constituted
14 protected health information?

15 A. No, I did not. I knew the patient names.
16 That I knew.

17 (Document marked as Exhibit 46
18 for identification)

19 BY MR. KILROY:

20 Q. Are you seeing Exhibit 46? It should be an
21 annual performance review July 1, 2017 to June 30th,
22 2018. Do you see that?

23 A. Yes.

24 Q. Okay. And fair to say this is another full

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu S. Desai, M.D.
October 22, 2020

356

1 year where you have no scholarship activity?

2 MS. WASHIENKO: Objection.

3 Q. And no research activity?

4 MS. WASHIENKO: Objection.

5 Q. Is that right?

6 MS. WASHIENKO: Objection.

7 A. Yes, but I am not -- I am on clinical
8 track. I'm not academic.

9 Q. Right. You're on a clinical track, so,
10 therefore, you don't need academic time I
11 understand.

12 MS. WASHIENKO: Objection.

13 Q. Professional development --
14 It's not that -- I didn't say academic time. I
15 don't have to do the papers and all of that. That's
16 what I'm saying. You are testing -- you are testing
17 the matter.

18 THE REPORTER: You are? I'm sorry.

19 A. You are changing the subject on me. That's
20 what I don't deserve. Yeah. A lot of people get to
21 academic time and they don't show any paper or
22 anything. When you come in the hospital the first
23 week, you don't give the papers and all of that.

24 MS. WASHIENKO: Dr. Desai, I will circle

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu S. Desai, M.D.
October 22, 2020

357

1 back with you.

2 THE WITNESS: That's fine.

3 Q. And it's another full year where you don't
4 have listed any professional development courses,
5 programs, workshops that you participated in to
6 enhance your professional development, correct?

7 A. Yes.

8 (Document marked as Exhibit 47
9 for identification)

10 BY MR. KILROY:

11 Q. I show you Exhibit 47. Exhibit 47 is a
12 letter to you from Absence One, which is the new
13 FMLA provider for UMass. And fair to say you were
14 approved for another year's worth of intermittent
15 FMLA from March 21st, 2018, through March 20th of
16 2019, right?

17 A. Yes.

18 Q. And you were approved for two episodes
19 every two months with each absence lasting up to a
20 day, right?

21 A. Yes. But I never did take any time --

22 Q. And --

23 A. -- a few times -- except my pacer battery
24 change. I didn't --

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu S. Desai, M.D.
October 22, 2020

358

1 Q. And this was -- this was in order to help
2 you deal with your heart condition in the event of a
3 flare-up, right?

4 A. Yes.

5 Q. And, other than this request for
6 intermittent FMLA, two episodes every two months
7 lasting up to a day, you hadn't requested any other
8 assistance with respect to your heart condition,
9 correct?

10 MS. WASHIENKO: Objection.

11 A. Please, repeat the question.

12 Q. Other than asking the ability to take time
13 off as listed here on your FMLA certification during
14 this year, you haven't requested any other
15 assistance based on your heart condition, correct?

16 MS. WASHIENKO: Objection.

17 A. I -- I requested for the -- just for the
18 call and all of that.

19 Q. For the -- you mean for the weekend call?

20 A. Yeah.

21 Q. And so, other than the weekend call
22 requesting a home workstation and other than the
23 FMLA, you didn't request anything?

24 MS. WASHIENKO: Objection.

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu S. Desai, M.D.
October 22, 2020

359

1 A. I asked what the -- like I was saying, the
2 12 days for teaching academic time. I -- yeah. I
3 don't recall anything else.

4 Q. And the -- you never submitted a doctor's
5 note of any kind that said you needed to be able to
6 do remote reads from your home, did you?

7 A. I don't need the doctor's note. It is,
8 like, ten days working in a row.

9 Q. Ma'am, will you just answer my question.
10 Did you ever submit a doctor's certification
11 indicating that you needed to work from home when
12 on-call?

13 A. No.

14 Q. And were you able to actually complete your
15 call duties without working from home?

16 A. Always. I -- I did it at my house. Even
17 if I get the spell, I just sit down and then do it.

18 Q. So you were capable of performing the
19 essential functions of your job as long as you were
20 given FMLA per this certification during 2018
21 to '19, right?

22 MS. WASHIENKO: Objection.

23 A. Yes.

24 Q. And you were never denied the right to take

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu S. Desai, M.D.
October 22, 2020

360

1 that FMLA, were you?

2 A. No.

3 (Document marked as Exhibit 48
4 for identification)

5 BY MR. KILROY:

6 Q. Next is Exhibit 48. Do you know who
7 Dr. Litmanovich is?

8 MS. WASHIENKO: It hasn't shown up yet,
9 Bob.

10 MR. KILROY: I'm sorry.

11 A. I don't know.

12 Q. Do you know who --

13 A. I don't know who she is.

14 Q. Okay. Do you understand that she was hired
15 as an expert in radiology to do a quality assurance
16 review for the department with respect to 50
17 cases?

18 A. That what it says here.

19 Q. Okay. And you -- you think it was wrong
20 for them to hire Dr. Litmanovich because Dr. Rosen
21 knew of her, is that right?

22 MS. WASHIENKO: Objection.

23 You can answer.

24 A. Partly because it is biased. Right. And

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu S. Desai, M.D.
October 22, 2020

361

1 the thing is what was done was not correct. 25 of
2 my cases and five or two of other cases. So it's
3 not -- the methodology was completely wrong.

4 Q. I'm just asking, are you claiming that
5 because Dr. Rosen knew this expert in radiology and
6 chose her to do this study that that was
7 discriminatory somehow?

8 MS. WASHIENKO: Objection.

9 A. I'm not saying it is discriminatory, but I
10 believe this is wrong --

11 Q. Okay.

12 A. -- completely wrong.

13 (Document marked as Exhibit 49
14 for identification)

15 BY MR. KILROY:

16 Q. Okay. I'm showing you Exhibit 49, which is
17 a summary table which I believe you would have seen
18 when you met to discuss the results, and it's
19 showing for the 50 cases that were reviewed that
20 you -- that the expert found that you had five major
21 errors and five minor and, for the other 25 cases,
22 there was one major error and seven minors. Do you
23 see that?

24 A. I do. I do not agree completely.

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu S. Desai, M.D.
October 22, 2020

362

1 Q. I didn't you ask you for your agreement or
2 not.

3 A. If you did or not, I have to -- I have to
4 say that it is completely wrong.

5 Q. Fair to say that --

6 A. And -- and, by the way, one of the cases
7 she's -- she's not even talking about my case.

8 Q. Ma'am -- ma'am, I don't have a question
9 pending. Please, stop.

10 MS. WASHIENKO: Dr. Desai --

11 A. If you don't, you should listen.

12 MS. WASHIENKO: Dr. Desai, I will circle
13 back with you.

14 THE WITNESS: Yeah, but --

15 Q. Are you -- are you -- are you claiming Dr.
16 Litmanovich, when she arrived at her findings of
17 five major findings for you, five minor findings,
18 one major for the other 25 and seven minor, are you
19 claiming that her analysis was discriminatory in any
20 way?

21 MS. WASHIENKO: Objection.

22 You can answer.

23 A. I'm not saying it is discriminatory. I'm
24 saying it is wrong.

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu S. Desai, M.D.
October 22, 2020

363

1 Q. Okay. But you're not claiming that she was
2 discriminating based on age, race, color, gender,
3 disability or national origin, right?

4 A. I hope not.

5 Q. Well, it's your claim, ma'am. I need to
6 know. Are you claiming she was discriminating when
7 she did this, yes or no?

8 MS. WASHIENKO: Objection. Asked and
9 answered.

10 MR. KILROY: Well, she said, "I hope not,"
11 so now I'm confused. I don't know what she's
12 actually claiming.

13 A. How do I know what is going in their mind?
14 I'm not the one.

15 Q. So you're not claiming she was
16 discriminating, right?

17 A. I don't think so.

18 Q. Okay. I'm going to show you Exhibit -- I
19 believe we're on 49.

20 MS. WASHIENKO: We might be up to 50, Bob.

21 MR. KILROY: Yup. You're correct. It is
22 50. Thank you, Pat.

23 MS. WASHIENKO: You're welcome. It's about
24 the extent of my math, but I'll show that part.

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu S. Desai, M.D.
October 22, 2020

385

1 A. I'm not aware.

2 Q. Do you know of any of your colleagues who
3 had a medical condition that needed an
4 accommodation?

5 A. I don't know. Maybe, Dr. Sue Afonso, she
6 went part-time or seeked reduced hours because of
7 her eye. That's the only I know.

8 Q. Okay. And that was approved, right? She
9 still works for them?

10 A. I assume it was.

11 Q. Okay.

12 A. I can't speak for her.

13 MR. KILROY: Pat, I'm all set with the
14 exception of, possibly, if there's medical documents
15 we haven't received, but otherwise, I'll -- I'll
16 pass the witness. Thank you.

17 CROSS EXAMINATION

18 BY MR. JOHNSON:

19 Q. Dr. Desai, name is Mark Johnson, and I
20 represent only the medical school in this case.

21 A. Okay.

22 Q. And I have a couple of questions.

23 As part of your dual employment, you had a
24 faculty appointment at the medical school, isn't

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu S. Desai, M.D.
October 22, 2020

386

1 that correct?

2 A. Yes.

3 Q. Okay, was that a non-tenured position?

4 A. It was.

5 Q. And was it -- if you had to describe your
6 duties would they be primarily teaching as part your
7 faculty?

8 A. Medical student, rotating through chest.

9 Q. But -- but they were primarily teaching
10 duties?

11 A. Yes.

12 Q. Okay. And were those duties separate from
13 your clinical work?

14 A. See, when I'm doing the work, they sit next
15 to me and I teach them kind of, and once in a while
16 we give them, like, one hour, half an hour
17 conference.

18 See, in my case it was a chest, so then I
19 show them the chest cases just as a (inaudible).

20 Q. But in the faculty evaluations that we
21 reviewed earlier -- and I can refer you to a
22 specific exhibit number, if necessary but -- it
23 seemed to list two separate categories, break --
24 broke down percentages of -- of clinical work and

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu S. Desai, M.D.
October 22, 2020

387

1 educational work. Do you recall seeing that?

2 A. Yeah. I know they are separate. Yeah.
3 Yeah.

4 Q. Okay. So your clinical work was separate
5 from your educational work, isn't that right?

6 MS. WASHIENKO: Objection.

7 A. Yeah. In a -- in a -- in a way, it is
8 actually combined, but I don't know. If you want to
9 separate it, you can.

10 Q. Okay. And so I -- I only want to talk
11 about your teaching duties as part of your faculty
12 appointment at the medical school, and as to those,
13 would you agree with me that your termination --
14 your employment termination didn't have anything to
15 do with those -- your performance of specifically
16 those teaching duties at the medical school?

17 A. I agree.

18 Q. Okay.

19 A. It has nothing to do with that.

20 Q. Okay. And you understood that at the time
21 of your termination in March of 2018?

22 A. Yes.

23 Q. That's all I have.

24 A. Thank you very much.

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu S. Desai, M.D.
October 22, 2020

409

1 Q. Prior to learning that Dr. Rosen had had an
2 independent investigation into your readings done,
3 had anyone spoken to you about your cases?

4 A. Not at all.

5 Q. Did Dr. Rosen make you aware in advance
6 that he was undertaking a review of your readings?

7 A. Not at all.

8 Q. When did you first learn about the review
9 of your cases?

10 A. When I went to the meeting March 14th,
11 2018.

12 Q. Can you describe what happened that day.

13 A. It was, like, a regular day because I had
14 no idea what is going to happen in next half an
15 hour. I -- like, a regular day around -- around
16 11:30 I was checking first part of the morning cases
17 for my resident. So I was sitting with him, and
18 then one of my pulmonary, Dr. Digis (phonetic) came,
19 and he said, Can you read this case? I have patient
20 coming in my office.

21 So it was read by somebody else, but he
22 asked my opinion, so I read that, and I said, "Looks
23 like infection. Just read the patient and repeat
24 the study, but the original say metastatic disease."

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu S. Desai, M.D.
October 22, 2020

410

1 So I give him that opinion, and it was
2 done. As soon as I finished that, my phone rang and
3 it was ten minutes to twelve. So I picked up the
4 phone, and it was a surgeon from Marlborough
5 Hospital, and he's asking me, "Can you review the
6 case," and I saw it was read by somebody else. So I
7 said, "Will you please have that person go over,"
8 and he said, "No. I have a patient coming in the
9 office. Will you please do it."

10 So I did it, and his main question was that
11 does the patient need a vaginal resection or needs a
12 lobectomy and I said, "It needs lobectomy," and then
13 he did reply, "That's what the Mass. General people
14 also say."

15 So then I'm -- so meeting -- I finished,
16 and it was twelve o'clock. So I didn't want to be
17 late in the office, and I didn't know what I was
18 getting into the thing. So I -- and I had asked
19 before when they said there was a meeting, and I had
20 no idea what was it about. So I just assumed,
21 maybe, Dr. Dill complain about -- because he was
22 doing for everybody and that's why Dr. Rosen wants
23 to talk to me.

24 So I enter the office. Dr. Rosen was

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu S. Desai, M.D.
October 22, 2020

411

1 there. Dr. Charles -- I don't even remember his
2 name, and he gave me the letter. No reaction. Just
3 like that. You are terminated as of this. It felt
4 like somebody put a knife in my heart, and I
5 remember forever that day.

6 So my next question was why, and he said,
7 "no (inaudible)," and then he brought up that there
8 is complaint about poor quality work, and "I did an
9 independent review, and as of now, you're not
10 supposed to read the CT scan."

11 Then I went out of the room. I couldn't
12 even stand, and suddenly life was upside down like
13 9/11. I will never get my life before this, and I
14 don't even want my enemy to go through this.
15 Really, it's -- in my life, this was the worst
16 experience I have ever, ever gone through, and it
17 is -- it is like nobody realizes to get to this
18 level -- see, I have more than 35 years of
19 experience in radiology. Before that I spend,
20 maybe, 12 to more than that to become a doctor, to
21 become a resident to do -- but I went.

22 So it is 40 years of work and hard work
23 dedicated to UMass., so many years, and this is what
24 I get, and it is like -- and the funny thing is --

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu S. Desai, M.D.
October 22, 2020

447

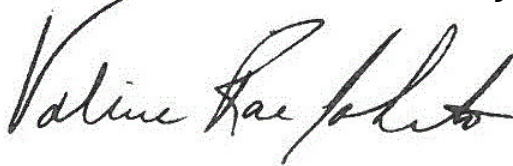
1 COMMONWEALTH OF MASSACHUSETTS)

2 SUFFOLK, SS.)

3 I, Valerie Rae Johnston, Shorthand Reporter and
4 Notary Public in and for the Commonwealth of
5 Massachusetts, do hereby certify that there came
6 before me on the 22nd day of October 2020, at 10:04
7 a.m., the person hereinbefore named, who was by me
8 duly sworn to testify to the truth and nothing but
9 the truth of her knowledge touching and concerning
10 the matters in controversy in the cause; that she
11 was thereupon examined upon her oath, and her
12 examination reduced to typewriting under my
13 direction; and that the deposition is a true record
14 of the testimony given by the witness.

15 I further certify that I am neither attorney or
16 counsel for, nor related to or employed by, any
17 attorney or counsel employed by the parties hereto
18 or financially interested in the action.

19 In witness whereof, I have hereunto set my hand
20 and affixed my notarial seal this ____ day of
21 November 2020.

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